

FILED

JUL 26 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

XIAO HAN,

Petitioner - Appellant,

v.

DENNIS HANDIS,

Respondent - Appellee.

No. 05-17314

D.C. No. CV-02-04567-WHA

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Xiao Han, a California state prisoner, appeals pro se from the district court's judgment denying his petition for habeas corpus, brought under 28 U.S.C. § 2254.

We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253(a). We review de

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

novo a district court's ruling on the merits of a habeas corpus petition.

Sophanthavong v. Palmateer, 378 F.3d 859, 866 (9th Cir. 2004). We affirm.

Han contends that his trial counsel rendered ineffective assistance by affirmatively misinforming him of the potential deportation consequences of his plea agreement. After extensive evidentiary hearings, the state courts found that Han was adequately advised of the immigration consequences of his plea at the time of his plea. We deny habeas relief because Han has not rebutted this factual finding by clear and convincing evidence, *see* 28 U.S.C. § 2254(e)(1);

Sophanthavong, 378 F.3d at 867, and further, because Han failed to demonstrate that his attorney's advice fell below the wide range of professionally competent assistance. *See Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 700 (1984).

To the extent Han raises uncertified issues, we construe such argument as a motion to expand the Certificate of Appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood* 195 F.3d 1098, 1104-05 (9th Cir. 1999) (*per curiam*).

AFFIRMED.